

Message Text

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SUBJECT: MARITIME DISCUSSIONS

REF: RIO DE JANEIRO 1120

1. FOLLOWING ARE ASSISTANT SECRETARY BLACKWELL'S REPLIES
TO QUESTIONS RAISED BY SUPERINTENDENT ABUD:

1(A) U.S. MARITIME REGULATORY LAWS APPLY TO PUERTO RICO
AS THEY DO TO THE STATES OF THE UNION. THUS, CARRIERS
OPERATING IN THE FOREIGN COMMERCE OF THE UNITED STATES
BETWEEN PUERTO RICO AND FOREIGN COUNTRIES MUST HAVE TARIFFS
ON FILE WITH THE FMC,JUST AS THEY MUST HAVE TARIFFS ON FILE
WITH THE FMC TO OPERATE BETWEEN FOREIGN COUNTRIES AND
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CONTINENTAL U.S. PORTS.

IN THE DOMESTIC OFFSHORE COMMERCE, SHIPS OPERATING IN THE
PUERTO RICO/CONTINENTAL U.S. TRADE ARE SUBJECT TO FMC
REGULATION IN THE SAME MANNER AS SHIPS OPERATING BETWEEN,
E.G., HAWAII OR ALASKA AND THE CONTINENTAL U.S. THE
CABOTAGE LAWS OF THE U.S. APPLY TO PUERTO RICO. THERE HAS

BEEN, AND CONTINUES TO BE, A JURISDICTIONAL DISPUTE BETWEEN THE FMC AND THE ICC OVER WHICH AGENCY PROPERLY HAS AUTHORITY OVER INTERMODAL MOVEMENTS.

ALL AGREEMENTS BETWEEN CARRIERS, PORTS, ETC. IN THE PUERTO RICO TRADES REQUIRE APPROVAL BY THE FEDERAL MARITIME COMMISSION UNDER SECTION 15 OF THE MERCHANT MARINE ACT OF 1920. THERE IS NO DIFFERENCE BETWEEN PUERTO RICO AND THE REST OF THE UNITED STATES IN THIS RESPECT.

2(A) UNDER UNITED STATES LAW, PORTS IN PUERTO RICO ARE CONSIDERED TO BE UNITED STATES PORTS. FURTHER, THE UNITED STATES CABOTAGE LAW APPLIES TO PUERTO RICO. THIS LAW SAYS ESSENTIALLY THIS: QUOTE NO MERCHANDISE SHALL BE TRANSPORTED BY WATER . . . BETWEEN POINTS IN THE UNITED STATES . . . IN ANY OTHER VESSEL THAN A VESSEL . . . OF THE UNITED STATES. UNQUOTE.

INASMUCH AS PUERTO RICAN PORTS ARE INCLUDED IN QUOTE POINTS IN THE UNITED STATES, UNQUOTE NO FOREIGN-FLAG VESSEL MAY TRANSPORT CARGO BETWEEN PUERTO RICO AND THE CONTINENTAL UNITED STATES. THIS PROHIBITION NECESSARILY INCLUDES ALL CARGO OF FOREIGN ORIGIN TRANSSHIPPED AT PUERTO RICO DESTINED FOR THE CONTINENTAL UNITED STATES, IF THE PUERTO RICO/U.S. LEG OF THE VOYAGE IS ACCOMPLISHED

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IN NON-U.S.-FLAG VESSELS.

THIS PROVISION OF U.S. LAW IS NOT UNLIKE THE BRAZILIAN CABOTAGE LAW THAT RESERVES COASTWISE (OR INTRA-COUNTRY) TRANSPORTATION TO NATIONAL FLAG VESSELS.

BRAZILIAN DECREE NO. 5246, HOWEVER, GOES FAR BEYOND ACCEPTED CABOTAGE PRINCIPLES IN THAT IT WOULD PROHIBIT A U.S.-FLAG CARRIER FROM TRANSSHIPPING CARGO OF AMERICAN ORIGIN AT AN AMERICAN PORT DESTINED FINALLY TO BRAZIL. (FOR EXAMPLE: CARGO LOADED BY SEA-LAND AT BOSTON, TRANSSHIPPED TO ANOTHER SEA-LAND VESSEL IN NEW YORK, AND THENCE CARRIED TO BRAZIL.) IF A LAW SIMILAR TO DECREE NO. 5246 WAS ENACTED IN THE UNITED STATES, IT WOULD PROHIBIT NETUMAR FROM LOADING CARGO IN SANTOS, TRANSSHIPPING IT AT RIO DE JANEIRO, AND CARRYING THENCE TO NEW YORK. DOUBTLESS, BRAZILIAN AUTHORITIES WOULD CONSIDER SUCH A U.S. LAW AS AN UNWARRANTED AND UNREASONABLE INTRUSION INTO BRAZILIAN COMMERCE, AND RIGHTLY SO. SIMILARLY, THE UNITED STATES GOVERNMENT VIEWS DECREE NO. 5246 AS AN UNJUSTIFIABLE INTRUSION INTO ITS DOMESTIC COMMERCE. VANCE

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